

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

BUREAU OF SECURITIES REGULATION

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IN THE MATTER OF:

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* Case Number:

LOCAL GOVERNMENT CENTER,

* C-2011-000036

INC., ET AL

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HEARING ON PENDING MOTIONS

Hearing held at the New Hampshire Division of
Archives and Records Management Complex, 71 South
Fruit Street, Concord, New Hampshire on Tuesday,
July 21, 2014 commencing at 9:00 a.m.

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APPEARANCES:

For the New Hampshire Bureau of Securities
Regulation:

NEW HAMPSHIRE BUREAU OF SECURITIES
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5 For the Intervenor Towns of Auburn, Bennington,
6 Meredith, Northfield,
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15 Hearings Officer: Donald Mitchell, Esquire

16 Court Reporter: Laurie A. Gelinas, CSCR, RPR

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P R O C E E D I N G S

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3 HEARINGS OFFICER MITCHELL: Good morning. My
4 name is Don Mitchell. I'm the Presiding Officer over
5 the matter here this morning on July 22nd which is
6 captioned as the matter of Local Government Center,
7 Inc., et al docketed as Case Number C-2011-000036.

8 Yesterday a formal hearing was suspended or
9 recessed and this morning we have a couple of motions
10 that must be heard first and these are motions offered
11 by the intervenors who have been granted contingent or
12 limited participation in these proceedings. That said
13 and because there's an audio record being kept of
14 these proceedings, I'm going to ask each counselor if
15 there are any witnesses, but first if each counsel
16 would identify themselves for the record. We'll begin
17 with the Bureau of Securities Regulation. Mr.
18 Volinsky.

19 MR. VOLINSKY: Good morning. My name is
20 Andru Volinsky. I'm with Bernstein Shur and I
21 represent the Bureau of Securities Regulation.

22 MR. TILSLEY: Roy Tilsley also from Bernstein
23 Shur for the BSR.

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1 MR. RAMSDELL: Michael Ramsdell from the
2 Ramsdell Law Firm here on behalf of HealthTrust.

3 MR. FELMLY: Bruce Felmly from McLane, Graf,
4 Raulerson & Middleton representing PLT, and together
5 with me today is Patrick Closson.

6 HEARINGS OFFICER MITCHELL: Could I ask Mr.
7 Closson to introduce himself so we get your voice on
8 the record.

9 MR. CLOSSON: Patrick Closson from the McLane
10 law firm.

11 MR. FRYDMAN: David Frydman, general counsel
12 for HealthTrust, Inc.

13 MR. LEHMANN: Richard Lehmann from Douglas,
14 Leonard & Garvey representing the intervenors, the
15 towns who have intervened in this matter. I can tell
16 you those towns if you prefer.

17 HEARINGS OFFICER MITCHELL: Thank you very
18 much. I will recognize you for your amended motion in
19 just a moment, please. Okay. So if you would please
20 rise. I understand that you would like to amend your
21 initial Motion to Intervene.

22 MR. LEHMANN: That's correct, Mr. Mitchell.
23 I would like to amend the initial Motion to Intervene

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1 to ensure that all eight towns that I represent are
2 included in the intervention into this action and are
3 represented by my representations and arguments that I
4 will be making to this tribunal. The eight towns that
5 I represent should be as follows. Auburn, Bennington,
6 Meredith, Northfield, Peterborough, Plainfield, Salem
7 and Temple.

8 HEARINGS OFFICER MITCHELL: Okay. Is there
9 any further amendment on that motion?

10 MR. LEHMANN: No.

11 HEARINGS OFFICER MITCHELL: Mr. Volinsky for
12 the BSR?

13 MR. VOLINSKY: No objection.

14 HEARINGS OFFICER MITCHELL: Mr. Ramsdell?

15 MR. RAMSDELL: No objection.

16 HEARINGS OFFICER MITCHELL: Mr. Felmly?

17 MR. FELMLY: No objection.

18 HEARINGS OFFICER MITCHELL: That amendment
19 will be granted. My understanding is that you have
20 filed a second motion that is entitled Intervenors'
21 Motion Proposing Manner of Distributing Funds to
22 Former Members of HealthTrust. Is that correct, sir?

23 MR. LEHMANN: That's correct, Mr. Mitchell.
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1 HEARINGS OFFICER MITCHELL: Would you like to
2 address that at this time?

3 MR. LEHMANN: I would. Thank you very much.
4 My clients' intervention in this matter got rolling
5 when we noticed paragraph 5 of the document that
6 HealthTrust filed. That document is HealthTrust's
7 Notice of Termination Agreement Terminating Settlement
8 Agreement and in paragraph 5 HealthTrust indicates
9 that it will distribute \$17.1 million dollars to its
10 current members or another identified combination of
11 current and former HealthTrust members. And that is
12 assuming the Presiding Officer and the BSR approve. I
13 wish to propose a manner of identifying a combination
14 of current and former HealthTrust members.

15 When the previous funds were distributed,
16 they were distributed only to HealthTrust members.
17 And I understand that HealthTrust's bylaws require
18 them to make distributions only to members. My
19 argument for you is that any distribution that is
20 restricted to current members and doesn't include
21 former members is contrary to the order you made
22 previously and that was affirmed by the Supreme Court.
23 It was very clear from your order that the nature of

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1 the returns or that anything that isn't part of the
2 cost of administration, cost of claims reserves or
3 cost of reinsurance needs to be returned to the
4 political subdivisions that made the contributions.
5 Our view is that that \$17 million dollar surplus that
6 you identified for return didn't only spring from the
7 subdivisions that are currently members but that it
8 sprang from subdivisions that had been members in the
9 past as well and that they should have received
10 returns going back to the time of their contribution.
11 As I identified in the pleadings under corporations
12 law, corporations are allowed to adopt bylaws that are
13 consistent with New Hampshire law. I submit that a
14 bylaw that includes a provision that does not require
15 the return of excess surplus to the members who
16 contributed to it violates New Hampshire law. I would
17 also point out something that is not included in the
18 pleadings and that is to the extent that HealthTrust
19 may argue that my clients entered into a contract with
20 it that required that manner of distribution, it is
21 well settled law that a contract term contravenes
22 public policy whether it means by statute or some
23 other form that is also enforceable, and I would cite

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1 the case of Harper versus Healthsource that is found
2 at 140 New Hampshire 770 and that was in 1996. Again,
3 it is well established law that a contract term or a
4 bylaw that violates public policy or statute is
5 unenforceable, and yet it would seem to the extent
6 that HealthTrust is asking you to make a distribution
7 solely to current members as opposed to the members
8 who contributed to the surplus, you would be violating
9 public policy or any such distribution would violate
10 public policy. I would also point out that doing that
11 leaves aside an important consideration which is that
12 there are individuals who made contributions all
13 throughout the period of time that I've identified who
14 also would lose out because, as you are almost
15 certainly aware, some retirees of the political
16 subdivisions pay for health insurance through their
17 former employers through a deduction that happens from
18 the Retirement System pension checks that they
19 receive, so a distribution that pays only current
20 members leaves those contributors to the excess or
21 surplus also out in the cold and that they need to be
22 factored into this as well, and some of them are
23 former employees of political subdivisions who are not

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1 members, so they would effectively be denied their
2 right to receive the return of excess funds as well.

3 I need to point out something about my
4 pleading. I inadvertently underlined a section
5 quoting the Supreme Court without attributing it
6 properly. The reference is to page 15 of the Supreme
7 Court decision. I underlined the provision itself for
8 a specific period, but in the Supreme Court decision
9 that section is not underlined, so just for clarity
10 and completeness I wanted to point that out to you,
11 but I do think that that portion of the argument is
12 important and that is essentially this. The earnings
13 and the thing that needs to be returned to the
14 political subdivisions have to be tied to a specific
15 period of time. If they are not tied to a specific
16 period of time as you recognized on page 45 of your
17 order, it would be difficult if not impossible to
18 assure members of political subdivisions that they
19 would be fully and proportionately provided the
20 accurate shares of those funds that I think ultimately
21 is at the heart of this issue as it comes before you.
22 There needs to be proportionality in the manner in
23 which funds are returned to political subdivisions.

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1 In my pleading I've proposed one manner of doing that
2 that I think is consistent. Well, it certainly is a
3 combination of current and former HealthTrust members.
4 It simply looks at the contributions from the years
5 2003 to 2010 which were the years that were involved
6 in your calculation of the \$17.1 million dollar
7 surplus, at least as I understand it, and for each
8 political subdivision that made a contribution it
9 looks to -- I calculated the percentage of the
10 political subdivision's contribution to that year, the
11 year is adjusted for interest pursuant to the court's
12 interest tables and those two factors together tells
13 us the proportionate amount of the \$17.1 million
14 dollars that should be returned to each of the
15 political subdivisions. I recognize that this is not
16 the only way and that there may be issues with my
17 calculations. I think it is a rational and defensible
18 way of distributing the funds that reflects the
19 contributions of the people who made it. Yet again, I
20 recognize I am neither an economist nor a
21 mathematician and that there may be other ways to do
22 it. Certainly my clients are interested in a fair and
23 proportionate return more than they are interested in

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1 the single specific way they've proposed.

2 I'm happy to answer any questions you may
3 have, but that is the gist of my presentation.

4 HEARINGS OFFICER MITCHELL: Why don't we hear
5 from the other parties that wish to respond to your
6 argument first before any questions I may have. Thank
7 you. Mr. Volinsky, do you have anything to say in
8 response?

9 MR. VOLINSKY: Yes, Mr. Mitchell. Our
10 position is not to take a position with respect to Mr.
11 Lehmann's motion but with two comments. The first
12 comment is the Bureau certainly agrees with the
13 general statement of law that Mr. Lehmann cites to the
14 effect that contracts with provisions that violate
15 public policy or that violate the law are not
16 enforceable. That is clearly the law of the state.
17 The second is to underscore the concern for the
18 individuals who paid for their benefits directly.
19 Persons who are retired from state or municipal
20 service are able to obtain medical benefits and those
21 benefits are paid for by deductions from their
22 retirement benefits directly so that it's not flowing
23 through the municipality. Similarly, those who have

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1 separated from government service often take advantage
2 of Cobra benefits which allows them to pay directly
3 for their health insurance. I do not know whether
4 that payment goes directly from the individual to
5 HealthTrust or through the municipality to
6 HealthTrust, so I would ask them to clarify that, but
7 I am concerned and the Bureau is concerned that
8 individuals be considered in this equation for
9 reimbursements.

10 HEARINGS OFFICER MITCHELL: Be considered?

11 MR. VOLINSKY: Yes.

12 HEARINGS OFFICER MITCHELL: Thank you. Mr.
13 Ramsdell.

14 MR. RAMSDELL: Mr. Mitchell, the first thing
15 I would ask you to do is to inquire of the intervenors
16 about the breadth of their motion for this reason. My
17 understanding on behalf of my client and I think
18 everyone's else's understanding here is that the
19 intervenors were allowed to intervene in this matter
20 for a limited purpose. That limited purpose is to
21 address the issue of the distribution of the \$17.1
22 million dollars to be repaid from PLT to HealthTrust
23 and then HealthTrust's distribution of that. However,

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1 when I read paragraph 8 of the intervenors' motion, it
2 says that the intervenors ask you to find that at
3 least as to the cumulatively retained surplus
4 identified in the final order. I would suggest to you
5 that a plain reading of that paragraph, and I'm not
6 suggesting this is what the intervenors meant, but I
7 would ask you to inquire of them whether the plain
8 reading of this would reach past the \$17.1 million
9 dollars. I believe it can be read to include the
10 distribution of the \$33.3 million and the \$3.1 million
11 that were made in 2013 by both HealthTrust and PLT.
12 While PLT's distribution is not specifically raised in
13 here, HealthTrust certainly would be implicated, and
14 so I would ask that you inquire of the intervenors as
15 to whether in fact the apparent breadth of paragraph 8
16 means they are seeking something other than to address
17 the \$17.1 million dollars because I believe that would
18 be improper.

19 HEARINGS OFFICER MITCHELL: Mr. Ramsdell, let
20 me interrupt your presentation and have him do that so
21 that your following remarks might be better focused.

22 Mr. Lehmann, could you please come forward
23 for record purposes. You've heard the inquiry from

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1 your brother counsel.

2 MR. LEHMANN: I have. The proposal relates
3 solely to the \$17.1 million and nothing else. And the
4 reason it was framed the way, in terms of the
5 cumulative surplus I was referring to the cumulative
6 \$17.1 million dollars simply because what I'm not
7 proposing is any kind of prospective relief. I'm only
8 talking about the cumulative \$17 million that was part
9 of the order that is about to be distributed that was
10 referenced. It has nothing to do with how things are
11 going forward.

12 HEARINGS OFFICER MITCHELL: So you're waiving
13 claim to the previous distributions?

14 MR. LEHMANN: Well, we're litigating the
15 previous distribution in another forum, so I'm not
16 waiving anything, but I'm not making a claim for it
17 here.

18 HEARINGS OFFICER MITCHELL: Thank you. Is
19 that sufficient, Mr. Ramsdell?

20 MR. RAMSDELL: It is, Mr. Mitchell. Thank
21 you.

22 HEARINGS OFFICER MITCHELL: Would you please
23 continue, then.

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1 MR. RAMSDELL: Thank you. The argument has
2 been made to you by the intervenors that distributing
3 the \$17.1 million dollars to current HealthTrust
4 members would be inconsistent with public policy and
5 indeed inconsistent with your final order. I would
6 suggest to you that's not true. Your final order
7 expressly said that the previous distributions would
8 be distributed to current HealthTrust members and PLT
9 members and so distributing the \$17.1 million dollars
10 to current members would not be inconsistent with your
11 final order at all nor would it be inconsistent with
12 public policy.

13 The intervenors have conceded that their
14 participation agreements separate the bylaws, the
15 bylaws that they were contractually obligated under,
16 and to say that any distributions that are made will
17 go to current members, why is it not against public
18 policy? It's not against public policy because it is
19 consistent with RSA 5-B, but you also don't have to
20 look any further than what I submitted to you in the
21 prior proceeding, and they are still operative today,
22 and that is the Risk Pool Practices Agreements reached
23 by the other risk pools with the Bureau of Securities

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1 Regulation. One is Primex and one is SchoolCare. I
2 will represent to you, and these are already in
3 evidence in the prior proceeding but we will submit
4 additional copies, that the Bureau agreed with both of
5 the other risk pools that regarding surplus, surplus
6 shall be returned to eligible members as soon as
7 practicable but not earlier than December 31, 2013 or
8 not later than September 30, 2012. We agreed that
9 those distributions would go to current members of
10 those risk pools, not former members, but current
11 members, so the Bureau doesn't find it to be against
12 public policy to make the distributions consistent
13 with your final order and consistent with exactly what
14 we've suggested and inconsistent with what the
15 intervenors have asked you to do.

16 The only other thing I would say about the
17 intervenors' proposal is their professed concern that
18 absent a recalculation, if you will, there will be
19 shortfalls to some and windfalls to others, but their
20 calculation does exactly the same thing. All they've
21 done is an arithmetic calculation of, we paid
22 individually this much money in 2004, in 2005, in
23 2006, et cetera, and that the aggregate for those

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1 years is X number of dollars and so if you take our
2 percentage of each of those years, that's what we
3 should get plus interest. There's nothing in the Risk
4 Pool Agreements with the Bureau about accumulated
5 interest. There's nothing in your final order about
6 accumulated interest. But the methodology they've
7 used also gives windfalls to some and shortfalls to
8 some because it presumes that annually there was an
9 equal amount of surplus for a ten-year period. That
10 fact hasn't been established nor has it even been
11 alleged anywhere, and so the methodology itself calls
12 into question what they've asked for, but more
13 importantly it is inconsistent with your final order,
14 it is inconsistent with their participation agreements
15 and the bylaws that they agreed to and it is
16 inconsistent with the existing operating Risk Pool
17 Agreements between the Bureau and the other risk
18 pools.

19 HEARINGS OFFICER MITCHELL: Mr. Ramsdell, if
20 you could, could you restate your argument that you
21 recently mentioned with respect to the amount of
22 surplus being consistent or inconsistent over the
23 years? I missed that. I'm sorry.

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1 MR. RAMSDELL: Because the intervenors have
2 done a straight mathematical calculation, i.e., we've
3 paid this much in this year and there was total
4 contribution of this much that same year, if you
5 divide the \$17.1 million dollars by those
6 corresponding percentages on an annual basis and then
7 add interest to them, that's what we're entitled to,
8 but in that straight arithmetic calculation what
9 they're saying is that there was an equal surplus in
10 each of the ten years and that is simply not the case.

11 HEARINGS OFFICER MITCHELL: Thank you.

12 MR. RAMSDELL: Thank you.

13 HEARINGS OFFICER MITCHELL: Mr. Felmly, would
14 you like to respond?

15 MR. FELMLY: I have nothing further to add.

16 HEARINGS OFFICER MITCHELL: Could I ask you
17 to come forward if you have anything to add though?

18 MR. FELMLY: All I'm going to add is on
19 behalf of PLT I join in the arguments that Mr.
20 Ramsdell just made and I have nothing further to say.

21 HEARINGS OFFICER MITCHELL: Very good. I
22 just wanted to get you clearly on the record.

23 Mr. Lehmann, you've heard, if you will, the
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1 integrated responses and you're up for rebuttal, sir.

2 MR. LEHMANN: First of all, I just want to be
3 clear that we're not asking for interest to accrue to
4 the benefit of anybody. The interest calculation in
5 the formula does nothing more than recognize in the
6 distribution of the math that you have identified that
7 should be distributed, it allocates greater value to
8 surplus that existed in 2003 than the same dollar in
9 2010. The money accumulated over all those years. I
10 just want to be clear. We're not asking for a dime
11 more than \$17.1 million dollars to be distributed.
12 The only role interest plays in the calculation is in
13 figuring out the amount that should be attributed to
14 each town's contribution for each year, and what that
15 really ends up doing, because I did the calculations
16 without interest as well and they're almost identical
17 really simply because of the way the interest works,
18 mostly because we're talking about distribution of a
19 constant amount, not an amount that expands. It's
20 \$17.1 million. The only question is where it goes.

21 HEARINGS OFFICER MITCHELL: Is there a term
22 of art in your profession that addresses that type of
23 retrograde assignment of value to dollars?

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1 MR. LEHMANN: There may be. I don't know it.

2 HEARINGS OFFICER MITCHELL: Okay. All right.

3 Is there anything else you would like to say in
4 rebuttal?

5 MR. LEHMANN: Point two is I recognize that
6 your prior order authorized distributions to current
7 members. The reason we have an adversarial system in
8 which all represented parties pull in their direction
9 and the fact finder and decision maker then renders
10 the best decision they can is because that's what we
11 believe best ensures that all sides are represented.
12 You didn't have the benefit of somebody representing
13 the position I'm taking in the earlier proceedings. I
14 don't find any failure in that. I don't think anybody
15 did anything wrong. I think for the same reason the
16 Supreme Court requires that lower courts be presented
17 with arguments in order to preserve an argument, that
18 was effectively not an argument that was presented to
19 you, so I recognize that I'm presenting an argument
20 that's somewhat different than what you did previously
21 in the order that authorized the return of the
22 \$33 million dollars to current members, and I'm
23 bringing to your attention the best that I am able the

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1 fact that there are these towns that are not current
2 members but that did contribute to the growth of the
3 surplus as well as the employees of the towns who
4 contributed and the retirees and the people who were
5 Cobra beneficiaries. These people all contributed to
6 their growth of the surplus that's been ordered to be
7 refunded and they should be put in the position of
8 receiving some of their return.

9 Finally, HealthTrust raises the argument of
10 the contracts that were entered into, but again, I
11 reemphasize that the provision that would have allowed
12 HealthTrust to retain the excess surplus for that long
13 period of years and use it for their own purposes
14 before returning it I submit does violate public
15 policy and does violate the notion that these risk
16 pools are confidential conglomerations of communities
17 that get together to decide to pool their resources to
18 insure themselves over time. Allowing the money to
19 pool and grow and continue to sit there without
20 returning it is the core thing that violates public
21 policy.

22 Finally, I would go back to the first
23 question you asked me. When Mr. Ramsdell made his

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1 opening remarks in reference to the cumulative amount,
2 Mr. Ramsdell argued that the BSR has authorized
3 distributions. I'm not familiar with what those
4 distributions are, but when I referenced the
5 cumulative nature of 2003 to 2010, I was strictly
6 talking about things that happened in the past,
7 accumulations that happened over long periods of time.
8 If returns are being done every year or every two
9 years, I'm really not privy to that, as to how they're
10 going to do business going forward, so I'm not
11 entirely in a position to fully address the argument
12 of what the BSR agreed to with the other risk pools,
13 but I would submit that the sole accumulated amount of
14 money that we're talking about on behalf of the
15 intervenors is the amounts from 2003 to 2010 which
16 were sufficiently long ago that it is appropriate to
17 figure out a way to distribute the money to the ones
18 who made the contributions. To the extent that
19 HealthTrust argues that we didn't do a calculation
20 that incorporated the amount of the surplus
21 attributable to each year under the assumption that
22 that amount is different, I'm happy to try and
23 retrieve the data and put that in. HealthTrust got

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1 this ball rolling by asking you to bless the
2 distribution and I'm here proposing an alternate way
3 to do it.

4 HEARINGS OFFICER MITCHELL: Could you restate
5 that last statement for me?

6 MR. LEHMANN: From where I stand, HealthTrust
7 got this ball rolling on this conversation for this
8 part of the hearing concerning the distribution of the
9 \$17.1 million dollars when they put in a pleading that
10 they were going to distribute it to the members unless
11 you or the BSR said something different.

12 HEARINGS OFFICER MITCHELL: Thank you for
13 clarifying that. We'll go around again. Any further
14 comment, Mr. Volinsky?

15 MR. VOLINSKY: No.

16 HEARINGS OFFICER MITCHELL: Mr. Ramsdell, any
17 further comment?

18 MR. RAMSDELL: Only to point out that as I'm
19 sure you will either recall or in looking at the Risk
20 Pool Agreements that exist, those distributions had to
21 do with a surplus that existed at the time of the
22 agreements and also had been built up over the years,
23 so we're not talking about prospective relief at all.

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1 We're talking about exactly the situation that the
2 intervenors suggested.

3 I guess the last thing I would say is why did
4 HealthTrust put in its pleading to you that it will
5 distribute it to members or some other identifiable
6 group either as you order us to or consistent with the
7 BSR? Because that is exactly what we'll do. It
8 should go to the current members, but as we did with
9 the final order, we're going to comply with whatever
10 it is that you order.

11 HEARINGS OFFICER MITCHELL: Thank you.
12 Anything further, Mr. Felmly?

13 MR. FELMLY: No, sir.

14 HEARINGS OFFICER MITCHELL: Thank you. All
15 right. I have a couple questions, Mr. Lehmann, so
16 could I ask you to come forward. Mr. Lehmann, I
17 issued my final order on August 16th of 2012 and
18 you've made reference to that final order. At what
19 point in time, sir, do you believe that my order
20 becomes effective?

21 MR. LEHMANN: Well, I suppose it becomes
22 effective on the day you issued it.

23 HEARINGS OFFICER MITCHELL: Okay. With
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1 respect to the Pooled Risk Agreements, do you
2 understand that I've taken official notice of the
3 prior proceedings exhibits in this matter?

4 MR. LEHMANN: Mm-hmm.

5 HEARINGS OFFICER MITCHELL: And among those
6 exhibits are a copy of one of those. I had it as a
7 User Agreement. Do you know if that's the same term
8 of art - User Agreement and Risk Pool Agreement?

9 MR. LEHMANN: I do.

10 MR. VOLINSKY: I'm not sure it is.

11 MR. RAMSDELL: I have copies of them.
12 They're entitled Risk Pool Practices Agreement. I'm
13 happy, and I assume no one will object, to give you
14 these copies.

15 HEARINGS OFFICER MITCHELL: It's just the
16 title. My recollection is that there were two
17 different types of agreements and that's not what I
18 was getting from Mr. Lehmann.

19 MR. RAMSDELL: They're both entitled Risk
20 Pool Practices Agreement.

21 HEARINGS OFFICER MITCHELL: We'll make a copy
22 after the argument. Thank you.

23 Mr. Lehmann, are you familiar with my prior
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1 order as to earlier prospective intervenors in name?
2 There's several unions representing public employees.

3 MR. LEHMANN: Yes, I am.

4 HEARINGS OFFICER MITCHELL: And do you recall
5 in that that I denied their participation?

6 MR. LEHMANN: Yes.

7 HEARINGS OFFICER MITCHELL: And are you
8 familiar with that decision?

9 MR. LEHMANN: Yes.

10 HEARINGS OFFICER MITCHELL: Do you believe
11 that --

12 MR. LEHMANN: I hope I'm not going to be
13 quizzed about it, but I'm familiar with it.

14 HEARINGS OFFICER MITCHELL: I don't intend to
15 quiz you, but do you believe that has any legal effect
16 with respect to the relief you're asking or with
17 respect to the basis you're using for support of some
18 type of pass-through to employees?

19 MR. LEHMANN: No, I don't think that it
20 legally affects the right of people. It affected
21 their right to come in and be heard in this forum. I
22 don't think it affects their legal right to a portion
23 of the State refund, and I guess I would point out

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1 they stand one step removed from the position my
2 clients are in. My clients are former members of the
3 organization. The unions represent people who are
4 employees of my client or people similarly situated.

5 HEARINGS OFFICER MITCHELL: My recollection
6 of the record is that they represented their members
7 which were both active employees and retired or
8 terminated or otherwise removed from public service.
9 That's my recollection, so I will ask you to accept
10 that. I will also ask you to accept that as part of
11 the rationale for denying the issue of the individual
12 contributions and though those contributions therefore
13 the stated claim of a right to receive something was
14 addressed, and so I'll just refer you to the writing
15 as to whether or not that particular facet of your
16 argument has been addressed.

17 Mr. Lehmann, with respect to the reference to
18 the two types of agreements that have just been
19 mentioned, do you know if they were in effect in 1987
20 when the Pooled Risk Management program was put in
21 place by the Legislature?

22 MR. LEHMANN: I don't know the nature of the
23 agreements that were in effect in 1987.

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1 HEARINGS OFFICER MITCHELL: Okay. In your
2 pleading before me you intervene on behalf of now
3 eight communities, correct?

4 MR. LEHMANN: That's correct.

5 HEARINGS OFFICER MITCHELL: And so I'm going
6 to presume that the -- if I can find it -- bear with
7 me -- that the calculation in your paragraph 19 is the
8 only relief you're seeking.

9 MR. LEHMANN: That's correct.

10 HEARINGS OFFICER MITCHELL: Okay. Only
11 because from time to time I get sensitive, you made
12 reference to the word failure in the prior
13 proceedings, that it was not the failure of anyone not
14 to address the issue of prior members. Was that
15 essentially the representation?

16 MR. LEHMANN: Well, okay. Something to that
17 effect, yes.

18 HEARINGS OFFICER MITCHELL: And so I took an
19 inference from that that there was no consideration of
20 members other than current members in the conduct of
21 those proceedings and in the writing of that decision.
22 Is that a fair inference to take?

23 MR. LEHMANN: No, I think that I made those
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1 remarks in the context of the importance in an
2 adversarial system of there being somebody in the room
3 whose job it was to advocate forcefully and zealously
4 on behalf of a person's position and that our system
5 recognizes that the best way to make all the strongest
6 arguments on behalf of those parties is to have
7 somebody representing their interests and their
8 interests alone. I'm simply indicating that there was
9 no advocate whose job it was to represent those
10 limited particular interests, and I guess I would
11 point out, I think it's just a fact that there wasn't
12 somebody whose job it was to do that the way it is my
13 job to do that in this hearing today, so I'm not
14 finding fault with anything that anybody did.

15 HEARINGS OFFICER MITCHELL: That's not my
16 implication. I was just asking you to clarify that
17 and you've clarified it. I'm now asking you,
18 irrespective of whether someone was in the room,
19 whether you think that the hearings as you understand
20 them to have been conducted and the breadth of the
21 order did not address which political subdivision
22 members would receive funds, if any, and then we found
23 by the order that they would receive.

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1 MR. LEHMANN: The order addresses who
2 receives funds.

3 HEARINGS OFFICER MITCHELL: And the order
4 said which members.

5 MR. LEHMANN: Well, I believe one portion of
6 the order says current members and another portion I
7 believe says consistent with RSA 5-B. I may have that
8 wrong. Paragraph 14 of the order says that funds
9 shall be returned to members consistent with 5B:I,C.
10 If I'm not mistaken, that's what we're talking about
11 here, and my contention is that 5B:I,C and the way you
12 laid it out in the order very clearly and that the
13 Supreme Court affirmed suggests that the reasonable
14 way to determine that is to return it to the people
15 who contributed to the surplus. That's our position.

16 HEARINGS OFFICER MITCHELL: One last question
17 I believe. I don't mean to be helping you too much by
18 filling in the record, but I need to for the record
19 upon which I can make a decision. You have said that
20 you make no claim for prospective funds. Can I infer
21 from that that any claim for funds on behalf of the
22 intervenors ceases with the previous agreement of the
23 BSR and the respondents to try the case on financial

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1 statements concluding with December 31st of 2010?

2 MR. LEHMANN: Yes.

3 HEARINGS OFFICER MITCHELL: Have I stirred
4 anything up?

5 MR. LEHMANN: Can I just fill that in a
6 little bit? My understanding, and again, I wasn't
7 here, but my understanding is that you got to the
8 \$17.1 million dollar figure by using those years. And
9 I'm not interested in changing the \$17.1 million
10 dollar number. I'm only talking about how that gets
11 distributed out. I'm not taking issue with anything
12 that went on before other than the manner of
13 distribution.

14 HEARINGS OFFICER MITCHELL: Well, I won't
15 fill it in any further, but have I stirred anything up
16 with you, Mr. Volinsky?

17 MR. VOLINSKY: No, sir.

18 HEARINGS OFFICER MITCHELL: Mr. Ramsdell?

19 MR. RAMSDELL: No.

20 HEARINGS OFFICER MITCHELL: Mr. Felmly?

21 MR. FELMLY: No, sir.

22 HEARINGS OFFICER MITCHELL: Thank you very
23 much. Your first motion is granted and the second one

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1 I will take under advisement.

2 Are there any further motions at this time or
3 issues that should be brought to my attention?

4 MR. TILSLEY: Mr. Mitchell, just as matter of
5 housekeeping, I think the PLT has a pending motion
6 which I believe was going to be withdrawn pending
7 completion of the discussions we had yesterday.

8 HEARINGS OFFICER MITCHELL: Thank you for
9 reminding me of that housekeeping matter. I would
10 remind counsel that I made an order for you to retain
11 all transmissions of -- I think I characterized it as
12 social media that had emanated from this courtroom,
13 this hearing room, during the proceedings in April and
14 May of 2012, and I'm sure that you will be happy to
15 know that I have released that hold as of this time.
16 Thank you for your cooperation in that regard as we
17 all go forward with the new media and uses and
18 purposes. If you will recall, we had a technical crew
19 here that was live streaming. I will just represent
20 that the concern of the Presiding Officer at that time
21 was that there was interference or there was the
22 possibility of interference with the live streaming
23 and so exercising on the side of caution, that's why I

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1 asked for those to be preserved. That matter has been
2 resolved and no implications will be taken from that
3 one way or the other. So you don't have to keep all
4 that stuff anymore.

5 All right. We're going to suspend these
6 proceedings at this time. My understanding is that
7 there are discussions among the parties' counsel that
8 are going to continue. We will reconvene no later
9 than noon to make decisions at that time as to how
10 these proceedings may go forward. There being nothing
11 further, this matter is in recess. The record is
12 suspended.

13 (Whereupon, the hearing was suspended at 9:48 a.m.)

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C E R T I F I C A T E

I, Laurie A. Gelinias, RPR, a Certified Shorthand Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the Hearing on Pending Motions in the matter of Local Government Center, Inc., et al, taken at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

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